Raja Azlan Shah Ag. L.P. (delivering the judgment of the Court): The appellant gave false testimony at the murder trial of Karthigesu who was convicted and sentenced to death. That case rested on the appellant's testimony which provided the main link in the largely circumstantial evidence tendered by the prosecution. The conviction and sentence were set aside by this court when the appellant confessed on oath that he had told lies at that murder trial. He was duly charged and convicted of 'giving false evidence with intent to procure Karthigesu's conviction of a capital offence' under section 194 of the Penal Code. That particular offence carries a maximum sentence of 20 years and a fine. The learned judge imposed a sentence of 10 years imprisonment.

It is now said before us that that sentence was wrong; that it was harsh and manifestly excessive. Therefore this court should interfere because every wrong sentence is as much a miscarriage of justice as a wrongful conviction or acquittal.

In our view to give false testimony in a capital case is a very serious thing to do because it can jeopardise the life of the accused. It is for that reason that the Penal Code has provided a separate section to deal with the matter. The learned judge has dealt with it, we think, admirably and incisively in these terms:

"Witnesses giving evidence in court must never underrate the importance of speaking the truth.... True testimony alone will assist the court in arriving at a true verdict. It is most important therefore that people who appear as witnesses in court should never deviate from the truth for otherwise they would be polluting the administration of justice and thus committing a serious wrong to the court and society."

In another passage of his judgment he said this:

"...the offence of judicial perjury which the accused has committed is of such a grave nature involving the risk of human life that public interest must outweigh the plea of mitigation...."

It cannot be gainsaid that the appellant had shown a wanton disregard for truth. The sanctity of an oath meant nothing to him. We therefore conclude that he had acted with malice and with the direct object of bringing the administration of justice into disrepute.

Is the sentence harsh and manifestly excessive? We would paraphrase it in this way. As this is an appeal against the exercise by the learned judge of a discretion vested in him, is the sentence so far outside the normal discretionary limits as to enable this court to say that its imposition must have involved an error of law of some description? I have had occasion to say elsewhere, that the very concept of judicial discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. That is quite inevitable. Human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may sometimes reach different conclusions (see *Jamieson* v. *Jamieson*[1]). It is for that reason that some very conscientious judges have thought it their duty to visit particular crimes with exemplary sentences; whilst others equally conscientious have thought it their duty to view the same crimes with leniency. Therefore sentences do vary in apparently similar circumstances with the habit of mind of the particular judge. It is for that reason also that this court has said it again and again that it will not normally interfere with sentences, and the possibility or even the probability, that another court would have imposed a different sentence is not sufficient, *per se*, to warrant this court's interference.

For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorised or extraneous or irrelevant exercise of discretion. We are far from convinced that any criticism of the learned judge is warranted. He took the course he did, in outweighing the plea of mitigation in favour of the public interest with a desire to uphold the dignity and authority of the law as administered in this country. We agree. That must receive the greatest weight. It is a serious offence to give false testimony, for it is in the public interest that the search for truth should, in general and always, be unfettered. The courts are the guardians of the public interest (see the *Exclusive Brethren* case[2]).

The appeal is dismissed.

Appeal dismissed.

Solicitors: *S.M. Ratnam.*

CHUA EH SWEE v. SEW CHEW ENG & ANOR.

[O.C.J. (Mohamed Zahir J.) January 11 & May 20, 1981]
[Kota Bharu — Civil Suit No. 30 of 1977]

Small Estates — Collector to hear cases only where grant of Letters of Administration by authority other than High Court — Scope of s. 27(1) & (2), Small Estates (Distribution) Act, 1955.

The plaintiff claimed that the land originally belonged to the estate of one Khor Mak Inn, deceased, and the second defendant was appointed administrator under the Small Estates (Distribution) Act by the Collector. The plaintiff was the daughter of Khor Mak Inn. She alleged that the 1st defendant in complicity with the 2nd defendant on November 24, 1966 represented to the Collector that she was a purchaser of the land to the extent of 5/6th share and as a result such 5/6th share was ordered by the Collector to be transferred into the name of the first defendant thus depriving the plaintiff of her rightful shares. The defendants pleaded *res judicata*.

Held, allowing the plaintiff's claim: (1) the Collector could only hear cases where the grant of letters of administration was by an authority other than the High Court (section 27(1) & (2) of the Small Estates (Distribution) Act 1955);

(2) even though the plaintiff was present at the hearing before the Collector and submitted herself to his jurisdiction and even though she did not lodge an appeal against the order of the Collector, all those factors would not vest in the Collector the authority to hear the application for distribution. His action would be *ultra vires*, except in cases where the plaintiff's action is statute-barred and plea of limitation is pleaded by the defendant, which in this case was not so pleaded;

(3) the order of distribution by the Collector of November 24, 1966 was null and void and any registration in the said title lot entered in pursuance of such order must be revoked and expunged from record;

(4) the 1st defendant should apply to the court for distribution of the estate of the deceased.

CIVIL SUIT.

C. Jegathesan for the plaintiff.

Foo Say Ghee for the 1st defendant.

Cur. Adv. Vult.

Mohamed Zahir J.: The plaintiff as representative of the estate of Owi Kim Poi sued the defendants for a declaration that the distribution order made by the Collector on November 24, 1966 concerning land held in Lot 3572, Mukim of Pendek, Kota Bnaru to be null and void on the ground that it was obtained by complicity by the defendants and alternatively that the Collector in issuing such order was *ultra vires* of his powers under the Small Estates (Distribution) Act and for the consequential order that the land to the extent of 5/6th share therein be registered in the estate of the said Owi Kim Poi, deceased.

It is the claim of the plaintiff that the land originally belonged to the estate of one Khor Mek Inn, deceased, and the 2nd defendant was appointed administrator under the Small Estates (Distribution) Act by the Collector. It was further alleged that the 1st defendant in complicity with the 2nd defendant on November 24, 1966 represented to the Collector that she was a purchaser of the said land to the extent of 5/6th share and as a result such 5/6th share was ordered by the Collector to be transferred into the name of the 1st defendant thus depriving the plaintiff of her rightful shares. It was not pleaded what relationship existed between the plaintiff and the said Khor Mek Inn, but it appears from the agreed bundle of documents she was the daughter of Khor Mek Inn, deceased.

The defendants pleaded *res judicata.*

Mr. Jegathesan submitted to me on a preliminary point that the 2nd defendant was appointed administrator by the High Court and the Collector could not therefore act under section 27(2) of the Small Estates (Distribution) Act in proceeding to hear the distribution.

Mr. Foo, counsel for the defence, submitted that the plaintiff had failed to file an appeal against the decision of the Collector and the court has therefore no jurisdiction to entertain the claim.

From the notes of evidence taken before the Collector on November 24, 1966 the said Owi Kim Poi, deceased, who was then still living attended the hearing together with the defendants and three other beneficiaries. It appears from the notes of evidence the said Owi consented to the distribution in giving the 2nd defendant 5/6th share in the land.

From the evidence of the Pendaftar, the land was originally registered in the name of Sew's father and upon his death it was registered in the names of the beneficiaries according to their shares. Under the Land Scheme, the land was registered in the name of the deceased. This evidence was consistent with the allegation of Owi Kim Poi, deceased, that she was merely claiming her mother's share to the extent of 1/6. Based on this evidence, the Collector made the order as he did.

Was he acting *ultra vires* of his powers?

Section 27(3) of the Small Estates (Distribution) Act states as follows: —

"Where before the coming into force of this Act an application for distribution or — for a grant of letters of administration of a small estate under any written law repealed by this Act has been made to a Collector or, in the case of Sarawak, a Probate Officer, and the estate has not been fully administered the Collector shall have jurisdiction to continue the proceedings and shall continue them in accordance with this Act, as early as the circumstances admit."

L/A for the estate of Khor Mek Inn was granted under the Kelantan Administration Enactment 1930.

Only section 23 of the Administration Enactment, 1930 (concerning summary distribution by the Official Administrator) was repealed by the Small Estates (Distribution) Act 1955 and the rest remained in force until it was wholly repealed by the Probate and Administration Ordinance 1959.

The Collector stated in his grounds that he was acting under section 17(3) of the Act when he proceeded to hear the case. It appears to me he was wrong as he could only hear cases where the grant of L/A had been granted by an authority other than the High Court (see sections 27(1) and 27(2) of the Act). In this case the grant (page 1 of AB) of L/A was made by the High Court. Even though the grant stated that it was made in the High Court at Land Office Kota Bharu, yet it was clear that it was made by the High Court. The order was signed by the Assistant Registrar. Further, the wordings of the grant clearly depose that it was the court which granted the letters of administration. The fact that the hearing was held at Land Office was, most probably, for the sake of convenience in those days.

Even though the plaintiff was present at the hearing before the Collector and submitted herself to his jurisdiction and even though she did not lodge an appeal against the order of the Collector, all those factors would not vest in the Collector the authority to hear the application for distribution. His action would be *ultra vires* anyway, except of course in cases where the plaintiff's action is statute-barred and plea of limitation is pleaded by the defendant, which in this case was not so pleaded.

I therefore allow prayer 2 of the statement of claim for the declaration that the order of distribution by the Collector dated November 24, 1966 be held null and void and that any registration in the title Lot No. 3572 entered in pursuance of such order be revoked and expunged from record.

I further order that the 1st defendant apply to the court for distribution of the estate of the deceased. I do not think that I should distribute the land straight away without allowing the 1st defendant to prove her claim as purchaser and she should do so in the distribution before the court.

This is a case in which I think no costs should be awarded.

Claim allowed.

Solicitors: *Jegathesan & Co.; Foo Say Ghee & Co.*